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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ROSEBANK ROAD MEDICAL  
SERVICES LTD. et al.,

Plaintiffs and Appellants,

v.

RAMJI GOVINDARAJAN,

Defendant and Respondent.

A154444

(San Francisco City & County  
Super. Ct. No. CGC-16-549755)

Plaintiffs Rosebank Road Medical Services Ltd. (dba Rosebank Road Medical Center) (Rosebank) and Geeta Murali Ganesh (Ganesh) sued respondent Ramji Govindarajan (“Govindarajan”), alleging that he published defamatory reviews about them online. On a two-part special verdict form, the jury found that the reviews were defamatory but that Govindarajan did not post them. The trial court entered judgment in favor of Govindarajan.

On appeal, plaintiffs assert that (1) the trial court erred by submitting an audio recording to the jury before determining whether it was confidential; (2) the trial court abused its discretion in multiple evidentiary rulings; and (3) the verdict in favor of Govindarajan was not supported by substantial evidence. We affirm, as there was no prejudicial error and substantial evidence supports the jury’s verdict.

## **FACTS AND PROCEDURAL HISTORY**

### **I. The Parties**

Ganesh and her husband Murali Ganesh Kodoor (Kodoor) are residents of New Zealand. Together they own Rosebank, a New Zealand company consisting of a medical center and a real estate investment business. At the medical center, Ganesh is the principal general practitioner and Kodoor is the business manager.

Govindarajan is Ganesh and Kodoor's former son-in-law. He and their daughter Shweta Ganesh (Shweta)—both residents of California—got married in 2012 and had a son, R., in 2014. The relationship between Govindarajan and Ganesh began to deteriorate a month before R. was born. During one of their arguments, Govindarajan used his phone to record Ganesh yelling, “You bastard, I’ll take my daughter [unintelligible] away from you. What will you do? I’ll destroy you.” Soon after R. was born, Govindarajan and Shweta had a child custody dispute and a court ordered them to share joint custody. In 2015, Govindarajan petitioned for divorce.

Following the divorce, Ganesh, Kodoor, and Shweta filed various complaints in India against Govindarajan and his family. One alleged that they violated portions of the Indian Dowry Prohibition Act, another accused Govindarajan of domestic violence, and the last challenged the validity of his divorce from Shweta. All were ultimately dismissed by Indian courts.

### **II. Defamation Complaint**

In January 2016, plaintiffs filed a complaint alleging a single cause of action for defamation. The complaint alleged that, beginning in October 2014, anonymous defendants (John Does 1–20) published 23 defamatory reviews (Reviews) about Ganesh on RateMDs.com, a website that allows individuals to post anonymous public reviews of medical professionals.

In February 2016, plaintiffs filed a separate defamation lawsuit in India based on similar allegations. However, the Indian suit was criminal, not civil, and named Govindarajan, his father, his brother, and his sister-in-law as defendants instead of John

Does 1–20. Yet, from February to September, Ganesh swore in multiple declarations submitted in this case that she did not know the identities of the John Does.

In November 2016, plaintiffs filed their First Amended Complaint, substituting Govindarajan as John Doe 1 and changing the date of the first review from October 2014 to May 2015. The complaint alleged that Govindarajan’s “protracted and acrimonious” marriage and custody battle put him “at odds with Dr. Ganesh” and that he posted the Reviews to “exact revenge against Dr. Ganesh and her family, including by destroying Dr. Ganesh’s career and her professional standing.”

### **III. Trial and Verdict**

Prior to trial, both parties moved in limine to exclude certain evidence. As relevant to this appeal, plaintiffs moved to exclude the audio recording of Ganesh threatening to “destroy” Govindarajan, evidence of the various legal proceedings in India and of one legal proceeding in New Zealand relating to a \$1 million loan to Rosebank, evidence of Govindarajan’s and Shweta’s divorce and custody proceedings, evidence relating to Rosebank’s negotiations to buy a hotel in New Zealand, and the testimony of Govindarajan’s expert witness rebutting plaintiffs’ claimed damages. The trial court tentatively ruled that he would exclude some of this evidence (including evidence relating to the New Zealand lawsuit over the \$1 million loan) but emphasized the advisory nature of its in limine rulings and reminded the parties that they must renew their objections during trial or waive the issues.<sup>1</sup>

The three-week jury trial began in November 2017. Ganesh, Kodoor, and Govindarajan testified. In addition, four experts testified for plaintiffs and three testified

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<sup>1</sup> The trial court commented that it is “very hard to make hard-and-fast lines” about admissibility, informed the attorneys that evidence might “not necessarily” be excluded, noted that the applicability of Evidence Code section 352 can depend on how the attorney phrases the question, and stated that sometimes evidence that seems irrelevant pretrial may become relevant later. Often, a court cannot properly rule on admissibility until the evidence is actually offered at trial and the court can see its relevance, probative value, and potential for prejudice in context. (*People v. Jennings* (1998) 46 Cal.3d 963, 975.)

for Govindarajan. Ultimately, the jury found that the Reviews were defamatory, but that Govindarajan did not publish them. The trial court entered judgment in favor of Govindarajan.

Rosebank and Ganesh appeal, arguing that the judgment must be reversed and remanded to the trial court with instructions to enter judgment in their favor. They also seek a retrial to determine damages.

## **DISCUSSION**

### **I. Plaintiffs’ Evidentiary Challenges**

We review the trial court’s ruling on the admissibility of evidence under the abuse of discretion standard. (*People v. Jablonski* (2006) 37 Cal.4th 774, 805 (*Jablonski*).) Unless the trial court exercised its discretion in an “arbitrary, capricious or patently absurd manner,” its decision will not be disturbed on appeal regardless of whether a reviewing court would have ruled differently. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124; *Gonzales v. Nork* (1978) 20 Cal.3d 500, 507.)

Even if the trial court abuses its discretion, the error does not warrant reversal unless it resulted in a “miscarriage of justice.” (Cal. Const., art. VI, § 13.) For an error in a civil case, this occurs when “there is a reasonable probability that in absence of the error, a result more favorable to the appealing party would have been reached.” (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574 (*Soule*).) If the error is harmless, we will not reverse. (*Garcia v. Rehrig International, Inc.* (2002) 99 Cal.App.4th 869, 874–875 (*Garcia*).)

As the trial court instructed counsel that they must object during trial because its views on the motions in limine were essentially advisory, we review all evidence in question in the context of the actual trial, without regard to any pretrial rulings.

#### *A. The Audio Recording*

Plaintiffs objected to the admission of an audio recording of Ganesh threatening to “destroy” Govindarajan on the grounds that it was confidential under Penal Code section 632, hence inadmissible. They further argued that it should be excluded under Evidence

Code section 352.<sup>2</sup> Due to a disputed issue of fact as to whether the recording was confidential, the trial court tendered the determination of confidentiality to the jury, instructing them to disregard the recording if they determined it was confidential. Plaintiffs claim the trial court erred in tendering the question of confidentiality to the jury and that the court failed to conduct a proper section 352 analysis. We disagree.

### 1. Jury Resolution of Factual Dispute as to Confidentiality

With one exception not relevant here, Penal Code section 632 bars the admission of recordings of “confidential communications” made without the “consent of all parties.” (Pen. Code, § 632.) As our Supreme Court has explained, a conversation is “confidential” if a party to that conversation has an “objectively reasonable expectation that the conversation is not being overheard or recorded.” (*Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 768 (*Flanagan*).)

Plaintiffs argue that the issue of confidentiality was a preliminary question for the court to decide. But after *Flanagan*, courts have determined that it is up to the jury to evaluate the circumstances and decide whether a party could have reasonably expected that her conversation was private. (*Lieberman v. KCOP Television, Inc.* (2003) 110 Cal.App.4th 156, 169; *Hataishi v. First American Home Buyers Protection Corp.* (2014) 223 Cal.App.4th 1454, 1467.) Here, there was conflicting evidence as to confidentiality: Govindarajan testified that he told Ganesh he was going to record and she said, “Go ahead,” while Ganesh testified that she “never consented” to any recording. The trial court did not abuse its discretion in finding that the jury, as trier of fact, should resolve this factual dispute.<sup>3</sup>

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<sup>2</sup> All further statutory references are to the Evidence Code unless otherwise specified.

<sup>3</sup> Plaintiffs argue that admission of the recording should be reviewed de novo because the ruling depends on the interpretation of Penal Code section 632, subdivision (d). However, this case does not present a legal question as to statutory construction but rather a factual dispute regarding whether the circumstances in this case indicated that Ganesh had an objectively reasonable expectation that the conversation was not being overheard or recorded. The abuse of discretion standard is therefore appropriate.

Further, the trial court explained Penal Code section 632's bar on the use of recordings made without the consent of both parties and instructed the jurors that they should "disregard" and "forget about" the recording if they concluded there was no consent. Although plaintiffs assert that this instruction was insufficient and the recording "inflamed the jury against Ganesh," plaintiffs assume the jury was unable to follow the court's instructions. Absent any indication to the contrary in the record, and none is present here, we presume that the jury understood and applied the court's instructions. (*Jablonski, supra*, 37 Cal.4th at pp. 806–807.)

Confidentiality was a question of fact and the trial court gave appropriate instructions. Accordingly, the trial court did not err in submitting the recording to the jury for them to determine whether Ganesh had consented.

## 2. Prejudice

Under section 352, a court has discretion to exclude relevant evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of confusing the jury." (*Id.* § 352.) While the record must affirmatively show that the trial court weighed the prejudice against the probative value, an explicit ruling is not required. (*People v. Villatoro* (2012) 54 Cal.4th 1152, 1168.) Rather, an appellate court can infer the trial court's implicit weighing on the basis of record indications "*well short of an express statement.*" (*Id.* at p. 1168, citing *People v. Padilla* (1995) 11 Cal.4th 891, 924.) Here, the trial court was aware of the requisite analysis; indeed, while discussing the issue of confidentiality under Penal Code section 632, the court stated, "I thought there was a section 352 objection as well." Because the trial court clearly knew that section 352 was a concern, we infer that the court conducted the requisite balancing of prejudice and probative value before submitting the recording to the jury.

Even if the trial court failed to conduct a section 352 analysis before submitting the audio recording to the jury, any error was harmless: The jury had already heard Govindarajan's testimony that Ganesh yelled at him and threatened to "destroy" him.

The jurors also heard, at some length, about the animus between the parties. For example, Govindarajan testified that Ganesh and Kodoor applied for a New Zealand passport for R. without his permission and submitted evidence that Kodoor warned him to “be on the run.” In light of this record, there is no reasonable probability that plaintiffs would have obtained a more favorable result in absence of the admission of the recording. (*Soule, supra*, 8 Cal.4th at p. 574.)

*B. Evidence of the Indian Actions*

Plaintiffs next argue the court erred by admitting evidence of the Indian actions, including the complaint relating to the Indian Dowry Prohibition Act, the accusation of domestic violence, and the criminal defamation case. We disagree.

Although plaintiffs note that Govindarajan repeatedly raised the Indian actions during trial, they waived any challenge by failing to object on most occasions. (*People v. Lewis* (1990) 50 Cal.3d 262, 282 [a party must raise an objection to irrelevant or prejudicial evidence during trial in order to preserve the point for appeal].) The single time plaintiffs objected was to a question about Govindarajan’s father being put in jail due to the dowry action, and the court properly struck the answer and instructed the jury to disregard it.

Plaintiffs separately argue that the court erred in permitting evidence of the criminal nature of some of the Indian legal proceedings. In one instance, plaintiffs objected and opposing counsel rephrased the question to avoid the concern. The court sustained three additional objections and struck the answers. In all other instances, plaintiffs failed to object, so we consider those points waived. (*Lewis, supra*, 50 Cal.3d at p. 282.)

Finally, plaintiffs rely on a juror note to support their claim that introduction of evidence of the Indian defamation suit was unduly prejudicial and thus should have been

excluded.<sup>4</sup> However, the record contains no indication (and plaintiffs offer none) that this comment was ever discussed with the jury. We agree with Govindarajan that the Indian defamation suit was highly probative because it showed plaintiffs sued multiple defendants and were unsure about who actually posted the defamatory reviews. In light of the probative nature of this evidence, the trial court's decision that the danger of undue prejudice did not substantially outweigh probative value was not patently absurd.

### *C. The Hotel Negotiations*

Plaintiffs next contend the trial court prejudicially erred in allowing evidence of Rosebank's efforts to buy a New Zealand hotel. Again, we disagree.

As a threshold matter, plaintiffs cannot sustain their claim of error because *they* introduced evidence of the New Zealand hotel deal and the hotel's value. Plaintiffs read into evidence the deposition transcript of S. Payne, one of the sellers of the New Zealand hotel that plaintiffs inspected and were interested in buying. In the deposition transcript plaintiffs read to the jury, S. Payne testified that she and her husband, G. Payne, were hoping to sell the hotel for between \$40 and \$50 million. That same transcript included S. Payne's testimony that the defamatory reviews on RateMDs.com did not influence whether she and her husband would sell the hotel to plaintiffs.

Moreover, plaintiffs failed to object several times when the hotel-related evidence was raised. (*Lewis, supra*, 50 Cal.3d at p. 282.) In one such instance, when Govindarajan wished to use a portion of the deposition transcript of G. Payne, the court expressly asked if plaintiffs had an issue with the evidence. In response, plaintiffs not only failed to object, but actually agreed that the whole transcript should be read—entirely waiving their right to complain on appeal. (*Ibid.*)

Plaintiffs did raise a relevance objection to Govindarajan's use of a portion of Kodoor's deposition, in which he claimed he lost the hotel deal because the owners read

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<sup>4</sup> The juror's note stated: "I have a concern I would like to voice. They have mentioned that these two parties have sued each other in India already. I would like to know if it was the exact same case that was tried in India. If yes, then I am extremely biased against the Plaintiff."



the Reviews. But, as noted above, plaintiffs offered into evidence the issue of the hotel and its value, as well as S. Payne's testimony that the Reviews had no influence on whether she and her husband would sell the hotel to plaintiffs. There is thus no merit to their claim that the court abused its discretion in overruling their relevance objection in this instance, and there can be no legitimate claim that permitting Govindarajan to use this portion of Kodoor's testimony " 'resulted in a manifest miscarriage of justice.' " (*People v. Merriman* (2014) 60 Cal.4th 1, 74.)

#### *D. The Custody Dispute*

According to plaintiffs, the trial court prejudicially erred by admitting evidence of the custody dispute between Govindarajan and Shweta. An accurate review of the record refutes this contention.

The record reflects multiple occasions where Govindarajan raised the custody issue, but plaintiffs waived their claim of error by failing to object in all instances but one. (*Lewis, supra*, 50 Cal.3d at p. 282.) Plaintiffs' sole objection occurred when Govindarajan began to testify about Ganesh accusing him of hurting R. In this instance, the trial court immediately interrupted Govindarajan and prevented further testimony on the subject. There was therefore no prejudicial error regarding the custody issues.

#### *E. The New Zealand Lawsuits*

Plaintiffs also claim the trial court erred by allowing evidence of unrelated lawsuits in New Zealand. We disagree for a number of reasons.

First, Ganesh testified without objection that she and Kodoor were involved in a third-party lawsuit in New Zealand regarding a \$1 million loan made to them. Plaintiffs waived their right to claim error on appeal in the instances in which they failed to object. (*Lewis, supra*, 50 Cal.3d at p. 282.)

Second, in the instances where appellant objected to Govindarajan counsel's questioning, we see no reversible error. In one instance, plaintiffs objected when Govindarajan's counsel asked Ganesh whether the lawsuit brought by the third party involved Golden Grand Trading, a liquor importation business. The trial court interrupted counsel multiple times to inquire into the relevance of the question but did not rule on the

objection. Ganesh did not directly answer the question asked but ultimately told the jury that all the loan money had been returned to the third party. But, as Ganesh had testified that she and her husband were involved in the lawsuit, her testimony adding that all the money was returned to the third party hardly constitutes prejudicial error. Moreover, it is unlikely that two pages of testimony on the subject of a loan and lawsuit could impact the verdict in a three-week trial with nearly 5,000 pages of trial proceedings. Any error in failing to sustain this relevance objection was thus harmless. (*Garcia, supra*, 99 Cal.App.4th at pp. 874–875.)

Next, on a separate occasion, Govindarajan’s counsel asked Ganesh about a judgment from a New Zealand court relating to the same lawsuit. Ganesh again testified without objection that the money had been returned to the third party, and, ultimately, the court on its own motion struck the testimony relating to the New Zealand judgment, commenting that “this is what [section] 352 of the Evidence Code is designed for.” Plaintiffs cannot legitimately complain about the trial court’s decision to strike the testimony they now challenge on appeal. There was no prejudicial error regarding evidence of New Zealand lawsuits.

#### *F. Plaintiffs’ Business Ventures and Wealth*

Plaintiffs next assert that the court erred by admitting evidence of Rosebank’s and Kodoor’s business ventures, especially regarding liquor importation. Relatedly, plaintiffs claim the court erred in allowing Govindarajan to question Ganesh and Kodoor about their wealth, claiming such evidence was more prejudicial than probative. There is no merit to either contention.

Again, plaintiffs frequently failed to object when Govindarajan mentioned the topics of their business ventures and wealth, thus waiving those points on appeal. (*Lewis, supra*, 50 Cal.3d at p. 282.) Plaintiffs cite to a portion of the record where the court tentatively overruled an objection on this issue, but they neglect to mention that one page later the court said it would “strike all that from the record.” Plaintiffs likewise have no reason to protest the multiple instances in which trial court did in fact intervene.

Plaintiffs did object when Govindarajan questioned Ganesh about a business called Golden Grand Trading, a company that Kodoor testified was involved in liquor importation. But the trial court did not abuse its discretion in overruling this objection because Govindarajan's questions referred to financial documents that plaintiffs submitted, which named Golden Grand Trading as part of Rosebank's business.

Even assuming the court erred in admitting this evidence, no prejudice resulted. Ganesh denied any involvement with the liquor importation business and the jury found that the review accusing Ganesh of selling liquor was false, indicating that they believed her testimony. Plaintiffs do no more than speculate that the jury was biased because of plaintiffs' financial status and business pursuits. Indeed, plaintiffs themselves offered deposition testimony showing that Ganesh and Kodoor were interested in buying a hotel worth between \$40 and \$50 million. As a result, it is not reasonably probable plaintiffs would have achieved a more favorable verdict in the absence of evidence relating to plaintiffs' business ventures and finances. (*Soule, supra*, 8 Cal.4th at p. 574.)

#### *G. Hutchinson's Expert Testimony*

Plaintiffs contend the trial court erred in allowing Mark Hutchinson to testify as Govindarajan's rebuttal expert on damages. They claim that Hutchinson was unqualified in the field of damages and that his opinion as to actions plaintiffs could have taken to mitigate their damages was not proper rebuttal to their expert's testimony. But the jury found that plaintiffs had failed to prove that Govindarajan was liable for defamation, so they never reached the question of plaintiffs' claimed damages. Any purported error regarding the testimony of Govindarajan's rebuttal expert on damages thus cannot provide a basis for reversing the verdict.

#### *H. Suing RateMDs.com*

Next, plaintiffs contend the court abused its discretion in allowing Govindarajan's repeated questions about why plaintiffs did not sue RateMDs.com. They argue that this questioning created the impression that Rosebank was more interested in punishing Govindarajan than removing the defamatory posts when, in reality, the Communications Decency Act (47 U.S.C § 230) prohibited Rosebank from suing RateMDs.com. We

perceive no abuse of discretion in the court's evidentiary rulings with respect to this issue.

While plaintiffs are correct that websites that host third-party content are immunized from liability under the Communications Decency Act (47 U.S.C. § 230), when plaintiffs initially objected to Govindarajan's questions on this topic, the trial court repeatedly agreed that the topic was irrelevant and that Govindarajan's questioning improperly sought legal opinions from Ganesh and Kodoor. Later, plaintiffs opened the topic up for questioning themselves when their counsel asked Govindarajan's expert, Hutchinson, what his understanding was regarding whether an aggrieved doctor could sue and obtain a judgment against a website such as RateMDs.com, and they failed to move to strike his response that "lawyers can sue anybody for any reason." After opening up this issue and failing to strike what they now claim is legally incorrect and objectionable testimony, plaintiffs cannot legitimately complain regarding any of Govindarajan's questioning on this topic. (*Lewis, supra*, 50 Cal.3d at p. 282.)

### *I. Cumulative Effect of Alleged Errors*

Finally, plaintiffs claim that they suffered prejudice from the cumulative effect of the purportedly erroneous evidentiary rulings. According to plaintiffs, the jury "relied" on the prejudicial evidence and "disregarded expert and third-party party evidence" to find in favor of Govindarajan. We reject this claim because of our finding that the trial court did not err; but, even if it had, plaintiffs failed to demonstrate that they would have obtained a more favorable result in absence of the purported errors. (*Soule, supra*, 8 Cal.4th at p. 574.)

## **II. The Jury Verdict**

### *A. Standard of Review*

We review a jury verdict under the substantial evidence standard, upholding the verdict as long as it is supported by substantial evidence. (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*); *DiMartino v. City of Orinda* (2000) 80 Cal.App.4th 329, 336.) For evidence to be "substantial," it should be of "ponderable

legal significance,” “reasonable in nature, credible, and of solid value.” (*United Professional Planning, Inc. v. Superior Court* (1970) 9 Cal.App.3d 377, 393.) In examining the record, we consider the evidence in the light most favorable to the prevailing party. (*Sanchez-Corea*, at p. 907.)

We determine only whether there is substantial evidence to support the verdict; we do not weigh disputes in the evidence, evaluate the credibility of witnesses, or indulge in inferences contrary to the findings of the trial court. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.) If substantial evidence supports the jury’s conclusions, we uphold the judgment even if there appears to be stronger evidence to the contrary. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631 (*Howard*).)

#### *B. Substantial Evidence Supports the Verdict*

According to plaintiffs, “uncontroverted evidence” established that the “only decision supported by the substantial evidence” was a verdict in their favor, such that the jury would have found Govindarajan liable absent the alleged evidentiary errors discussed previously. We disagree. This assertion is not only speculative, it misrepresents the evidence.

To begin with, plaintiffs’ evidence did not conclusively establish Govindarajan’s liability. Edman, plaintiffs’ expert, offered technical evidence that the Reviews were published near Govindarajan’s house and office, that Govindarajan’s email account and PayPal account were both linked to the accounts that published the Reviews, and that information on these accounts was changed after plaintiffs served Govindarajan with a subpoena. While these details supported plaintiffs’ theory that Govindarajan posted the Reviews and then tried to cover his tracks, Edman admitted he could not establish who actually made the posts and could only infer who “likely” made them. Further, Edman conceded on cross-examination that other people could have published the Reviews using Tor—an untraceable, anonymizing browser that is freely available—and that Govindarajan could have been framed by someone with access to his email accounts. While Edman was skeptical about these possibilities, reversal would not be warranted even if we agreed with plaintiffs that their evidence was stronger than Govindarajan’s.

(*Howard, supra*, 72 Cal.App.4th at p. 631.) The question is whether any substantial evidence supports the verdict, and it does.

In addition to Edman's concessions on cross-examination, Govindarajan denied that he wrote the Reviews and testified that Ganesh, Kodoor, and Shweta had access to his emails and personal information. Plaintiffs give no weight to this testimony, but under a substantial evidence standard, we view the evidence in the light most favorable to Govindarajan and do not evaluate the credibility of witnesses. (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907; *In re Michael G., supra*, 203 Cal.App.4th at p. 589.)

Govindarajan's experts, Hutchinson and Yasumoto, provided additional evidence supporting the verdict. Hutchinson offered evidence suggesting that plaintiffs had posted their own fraudulent positive reviews on RateMDs.com. Yasumoto testified that the geolocation of IP addresses is often inaccurate and that anyone with Govindarajan's credentials could have accessed his account, posted the Reviews, and then manipulated the linked email account. According to plaintiffs, the fact that someone else "could have" posted the Reviews does not conflict with evidence linking Govindarajan to the Reviews. But because the plaintiff bears the burden of proof in a defamation case and plaintiffs failed to identify the defendant with certainty, this expert testimony undermined plaintiffs' case and further supports the jury's verdict.

In sum, because substantial evidence supports the jury's determination, we reject plaintiffs' request to reverse the verdict and enter judgment in their favor.

### **DISPOSITION**

We affirm the judgment. Govindarajan shall recover his costs on appeal.

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BROWN, J.

WE CONCUR:

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POLLAK, P. J.

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STREETER, J.